IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 671 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
MARCH 01, 2006.

Heard Shri Moharir, learned counsel for the petitioner – defendant, who is appellant before the 10th Ad-hoc Additional District Judge, Nagpur. Shri Moharir contends that present Respondent No.2 could not have been permitted to be added as party respondent in pending appeal in Order 22, Rule 10 of Civil Procedure Code. He contends that said respondent is purchaser from Respondent No.1, who happens to be original plaintiff during the pendency of appeal and as such the transaction is covered by Section 52 of Transfer of Property Act. He further contends that provisions of Order 1 Rule 10 of C.P.C. read with Order 22, Rule 10 of Civil Procedure Code are not relevant in this background and he invited attention to the judgment of the Hon'ble Apex Court in Amit Kumar vs. Farida Khatoon, reported at 2005(3) Mh. L.J. 330. He contends that admittedly,

the possession is with the appellant i.e. present petitioner and Respondent No.2 has only obtained a paper document i.e. a sale deed. According to him, if Respondent No.2 wants possession, Respondent No.2 can file a separate suit on the basis of that sale deed for possession against the petitioner – appellant.

Shri Abhyankar, learned counsel for respondent No.1, on the other hand, contends that the judgment of the Hon'ble Apex Court on which reliance has been placed by the petitioner, supports him. He contends that the original plaintiff has not opposed the addition and as original plaintiff has transferred his rights to present respondent No.2, Respondent No.2 has been added as party respondent.

From the arguments of advocates, it is apparent that suit is filed by Respondent No.1 against present petitioner for removal of encroachment and for possession. The property which is encroached upon has been allotted by Respondent No.1 to respondent No.2. The encroached portion is stated to be in possession of Respondent No.1. It appears that possession has not been handed over by Respondent No.1 to Respondent No.2 and petitioner is trying to make

capital out of this fact. However, when the fact that Respondent No.2 can file a separate suit on the basis of sale deed for removal of encroachment and possession against the petitioner is accepted, I fell to understand how and why the petitioner, against whom a suit has been filed by Respondent No.1 and which is now pending in appeal, can oppose the addition of Respondent No.2 as party. This is not a case where the plaintiff has objected to addition of Respondent No.2 as party. Respondent No.2, who has purchased the property of Respondent No.1 is taking care of interest of present respondent No.2, who is original plaintiff.

In the circumstances, no case is made out for interference in writ petition. Writ Petition is accordingly dismissed. No order as to costs.

JUDGE

*GS.